

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

MICHAEL NELSON,

Appellant,

v.

EASTERN WASHINGTON UNIVERSITY,

Respondent.

) Case No. RULE-99-0011

)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and NATHAN S. FORD Jr., Member. The hearing was held at the Spokane Ramada Inn, Conference Room 100, Spokane, Washington, on December 13, 1999. GERALD L. MORGEN, Vice Chair, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Michael Nelson was present and was represented by Stephen Matthews, Attorney at Law, of Phillabaum, Ledlin, Matthews & Gaffney-Brown. Respondent Eastern Washington University was represented by Patricia Thompson, Assistant Attorney General.

1.3 **Nature of Appeal.** This is a rule violation appeal in which Appellant contends that Respondent violated WAC 251-04-040 when, after his termination from an exempt position, he was placed in a position which had been abolished and no longer existed as a classified service position.

1.4 **Citations Discussed.** WAC 358-30-170; WAC 251-04-040.

II. FINDINGS OF FACT

2.1 Appellant Michael Nelson is a Budget Analyst III and permanent employee for Respondent Eastern Washington University. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on May 7, 1999.

2.2 In 1993, Appellant's classified Auditor III position was converted to an administrative exempt position. Appellant remained in the position and his new title was Director of Internal Audit. As a result of the conversion, the classified Auditor 3 position that Appellant previously held was abolished and no longer existed.

2.3 By letter dated March 10, 1999, Stephen M. Jordan, President of Eastern Washington University, advised Appellant that his administratively exempt appointment as Director of Internal Audit was being terminated effective April 9, 1999. The letter advised Appellant to submit an application for return to civil service no later than 30 days following the conclusion of the exempt appointment if he was interested in returning to civil service status, pursuant to WAC 251-04-040(11).

2.4 By memo dated March 10, 1999, Appellant informed Ken Berg, Director of Staff Personnel, that he wished to return to civil service and revert back to the highest class of position he previously held. The highest class of position Appellant previously held was Auditor III.

2.5 By letter dated March 29, 1999, Mr. Berg informed Appellant that effective April 12, 1999, the status of his Director of Internal Audit position was being changed from administrative exempt to classified service. Mr. Berg also informed Appellant that the title of his position was Auditor III.

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2 2.6 Respondent placed Appellant in an Auditor III position with the intent of beginning the
3 reduction in force process due to a lack of work.

4
5 2.7 From April 10, 1999 through June 13, 1999 Appellant worked as a classified employee with
6 the title of Auditor III. During this time period, Appellant performed duties similar to the duties he
7 performed as Director of Internal Audit and was compensated at a Range 54, Step I.

8
9 2.8 On May 7, 1999, Appellant filed a rule violation appeal with the Personnel Appeals Board
10 alleging that Respondent violated WACs 251-04-040, 251-19-160 and 251-20. In his appeal,
11 Appellant asserted that Respondent failed to place him in a viable civil-service position when it
12 placed him in the Auditor III position. Appellant stated that the Auditor III position had no job
13 specification or description, had no job duties and responsibilities, and had no valid work
14 assignments. (Note: During the course of the hearing, Appellant clarified that the relevant rule he
15 believed Respondent had violated was WAC 251-04-040.)

16
17 2.9 By memo dated May 17, 1999, Mr. Berg informed Appellant that because of a lack of work,
18 his position was being abolished and he was being reduced in force. Appellant was provided with
19 his options in lieu of layoff. Appellant accepted and was placed in a position as a Budget Analyst
20 III. When Respondent determined Appellant's seniority date, Respondent included only the time
21 Appellant was continuously employed as a classified employee and not the time period he held the
22 exempt position.

23 24 **III. ARGUMENTS OF THE PARTIES**

25 3.1 Appellant argues that Respondent violated WAC 251-040-040(11) when, following his
26 termination from an administrative exempt position and request for reversion to classified service, it

1 placed him in a non-existent position which was not listed on the Higher Education job
2 specifications listing and did not have any viable duties and responsibilities assigned to it.
3 Appellant argues that Respondent reverted him to a “job” but not a position which met the
4 definition of the term “position” as defined in WAC 251-01-300 because he was not assigned a set
5 of duties and responsibilities which related to the duties of an Auditor III. Appellant also argues
6 that he should receive seniority service credit for the time he was in the exempt position.

7
8 3.2 Respondent argues that Appellant has failed to meet his burden of proof by a preponderance
9 of the evidence. Respondent argues that in 1993 Appellant’s classified position was converted to
10 administrative exempt. Respondent asserts that Appellant was terminated from his administrative
11 exempt position, was advised of his reversion rights, that he exercised his reversion rights and was
12 subsequently placed in the highest level of position he previously held, which was as an Auditor III.
13 Respondent recognizes that the Auditor III position no longer existed as a classified position but
14 asserts that based on the Board’s decision on Hille v. EWU, Case No. 3771-V2 (1994), it was
15 required to place Appellant in a civil service position in the highest class held prior to implementing
16 his layoff. Respondent argues that Appellant is not entitled to receive seniority credit for the time
17 he was in exempt status.

IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

4.2 In an appeal of an alleged rule violation, Appellant has the burden of proof. (WAC 358-30-170).

4.3 The first issue here is whether Respondent violated WAC 251-04-040(12) when it placed Appellant in a position which no longer existed in classified service.

4.4 WAC 251-04-040 provides, in relevant part, as follows:

(12) Any person holding a classified position subject to the provisions of this chapter shall, when and if such position is subsequently exempted from the application of this chapter, be afforded the following right: If such a person previously held permanent status in another classified position, such person shall have a right of reversion to the highest class of position previously held, or to a position of similar nature and salary.

4.5 WAC 251-40-040 clearly states that the employees “shall have a right of reversion to the highest class of position previously held, or **to a position of similar nature and salary.**” (emphasis added). In this case, Respondent placed Appellant in an Auditor III position, the highest class of position Appellant previously held. However, this position was not a classified service position. Appellant has met his burden of proof that Respondent violated WAC 251-04-040. Respondent should have placed Appellant in a position in a civil service classification which was of similar nature and salary. Respondent’s technical violation notwithstanding, Appellant has failed to prove that he was adversely impacted by the violation.

1 4.6 Appellant's second argument is that he is entitled to receive seniority service credit for the
2 time he was in the exempt position. However, Appellant has failed to present evidence to support
3 or prove that Respondent violated any rules regarding his seniority date and has failed to prove that
4 the civil service rules entitle him to receive seniority credit for the time he was in exempt status.
5 Therefore, the appeal should be denied.

6
7 **V. ORDER**

8 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Michael Nelson is denied.

9
10 DATED this _____ day of _____, 2000.

11
12 WASHINGTON STATE PERSONNEL APPEALS BOARD

13
14 _____
15 Walter T. Hubbard, Chair

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17 _____
18 Nathan S. Ford Jr., Member